

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JEFFERY BRYANT PAYNE,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent,

Case No. C06-5059RBL

ORDER DISMISSING  
THE PETITION  
WITHOUT PREJUDICE

This habeas corpus action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636 (b)(1)(B) and Local Magistrates' Rules MJR 3 and MJR 4. Petitioner filed this action under 28 U.S.C. § 2254. When the court reviewed the petition prior to service the court noted several defects. The petition is unexhausted and does not name a proper respondent. The court entered an order to show cause why the petition should not be dismissed. (Dkt. # 7).

Petitioner has responded and asks permission to “withdraw” the petition. Pursuant to Fed. R. Civ. P. 41(a) a petitioner may voluntarily dismiss his case when no answer or motion for summary judgment has been filed by an adverse party. Rule 41(a)(1) specifically provides that dismissal as a matter of right can be foreclosed only by the filing of an answer

1 This petition has not been served and petitioner may dismiss the petition,

2 The Clerk is directed to send a copy of this Order to petitioner and to **DISMISS** this petition  
3 **WITHOUT PREJUDICE.**

4 DATED this 16<sup>th</sup> day of May, 2006.

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7 RONALD B. LEIGHTON  
UNITED STATES DISTRICT JUDGE

8 Recommended for entry this  
9 16<sup>th</sup> day of May, 2006.

10 /s/ J. Kelley Arnold  
11 J. Kelley Arnold  
12 United States Magistrate Judge  
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